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**[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103]**

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14 UNLIMITED JURISDICTION

17 **THE PEOPLE OF THE STATE OF
CALIFORNIA,**

18 Plaintiff,

19 v.

20 **BENJAMIN CABRERA, an individual and
21 d.b.a. TLC HOME CARE SERVICES;
22 GEOFFREY JIMENEZ, an individual; CARE
SPECIALIST HCS INC. (formerly known as
23 TLC HOME CARE SERVICES INC.), a
California Corporation; and DOES 1-50,
24 inclusive,**

25 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
PENALTIES**

**[VERIFIED ANSWER REQUIRED
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 446]**

26 Plaintiff, the People of the State of California (the People), by and through Rob Bonta,
27 Attorney General of the State of California, bring this action against Benjamin Cabrera
28 individually and also formerly doing business as (dba) TLC Home Care Services, Geoffrey

1 Jimenez, Care Specialist HCS Inc. (formerly known as TLC Home Care Services Inc.), and Does
2 one through fifty (collectively, Defendants), and allege as follows:

3 **INTRODUCTION**

4 1. In June 2016, Defendant Benjamin Cabrera, with the help of his business partner,
5 Defendant Geoffrey Jimenez, started a caregiving services business in California named TLC
6 Home Care Services. Cabrera operated TLC Home Care Services as a sole proprietorship until he
7 incorporated the company in August 2021, under the name of TLC Home Care Services Inc.

8 2. In September 2022, Cabrera sold TLC Home Care Services Inc. to Omar Ombra, who
9 succeeded Cabrera as the company’s owner and operator. A few days after the sale, Ombra
10 changed the name of the company to Care Specialist HCS Inc. and created a new company
11 website. Despite these changes, the company’s operations, policies, and core business practices
12 remained largely the same. Unless otherwise specified, references to “Care Specialist” throughout
13 this Complaint refer to the caregiving services business operated first by Cabrera as a sole
14 proprietorship dba TLC Home Care Services, and the subsequent corporate entity, owned and
15 operated first by Cabrera under the name of TLC Home Care Services Inc., and later by Ombra
16 under the new name of Care Specialist HCS Inc.

17 3. Since the inception of Care Specialist in 2016, Defendants misclassified and continue
18 to misclassify Care Specialist’s caregivers as independent contractors, in direct contravention of
19 California law and despite representing otherwise to Care Specialist’s clients.

20 4. Because Defendants made the decision to misclassify, and continue to misclassify,
21 Care Specialist’s caregivers as independent contractors, these caregivers have never been
22 guaranteed the basic labor protections afforded to employees such as a minimum wage or
23 overtime pay.

24 5. In fact, between at least 2016 and 2022, Defendants paid Care Specialist’s caregivers
25 who worked 24-hour shifts daily pay rates that always resulted in violations of California’s wage
26 and hour laws—either minimum wage violations, overtime violations, or both. For example,
27 some caregivers were paid as little as \$120 a day for working 24-hour shifts, which yielded a \$5
28 hourly pay rate with no overtime pay.

1 6. By misclassifying Care Specialist’s caregivers, Defendants have deprived them of
2 safeguards and benefits established by the State of California, counties, and cities, such as
3 minimum wages, overtime premium pay, reimbursement for business expenses, workers’
4 compensation coverage for on-the-job injuries, paid sick leave, and wage replacement programs
5 like disability insurance and paid family leave.

6 7. Recognizing the serious problem of employee misclassification and the harms it
7 inflicts on workers, law-abiding businesses, taxpayers, and society more broadly, the California
8 Legislature enacted Assembly Bills 5 and 2257. (Assem. Bill Nos. 5 and 2257 (2019-2020 Reg.
9 Sess.) (A.B. 5 and 2257).) A.B. 5 and 2257 codified and extended the California Supreme Court’s
10 landmark, unanimous decision in *Dynamex Operations W., Inc. v. Superior Court* (2018) 4
11 Cal.5th 903, reh’g. denied (June 20, 2018) (*Dynamex*). California law is clear: for the full range of
12 protections afforded by California’s wage orders, Labor Code, and Unemployment Insurance
13 Code, workers are generally presumed to be employees unless the hiring entity can overcome this
14 presumption by establishing each of the three factors embodied in the strict “ABC” test.

15 8. Defendants cannot overcome this presumption with respect to Care Specialist’s
16 caregivers. Care Specialist is the traditional employer of these misclassified employees. It hires
17 and fires them. It controls which caregivers have access to which clients and shifts. It sets
18 caregiver expectations and standards and disciplines caregivers for not meeting them. It sets the
19 rates clients pay for the services of its caregivers and determines how much caregivers are paid.

20 9. Care Specialist provides caregiving services to its clients, and its caregivers are the
21 employees who provide these caregiving services.

22 10. Defendants’ motivation for breaking the law is simple: by misclassifying Care
23 Specialist’s caregivers, Defendants do not “bear any of [the] costs or responsibilities” of
24 complying with the law. (*Dynamex, supra*, 4 Cal.5th at p. 913.)

25 11. The State’s laws against employee misclassification protect all Californians. They
26 protect workers by ensuring they receive the compensation and benefits they have earned through
27 the dignity of their labor. (*Dynamex, supra*, 4 Cal.5th at p. 952.) They protect “law-abiding”
28 businesses from “unfair competition,” and prevent the “race to the bottom” that occurs when

1 businesses adopt “substandard wages” and “unhealthy [working] conditions,” threatening jobs
2 and worker protections across entire industries. (*Id.* at pp. 952, 960.) They protect the tax-paying
3 public, who is often called upon to “assume responsibility” for “the ill effects to workers and their
4 families” of exploitative working arrangements. (*Id.* at pp. 952-53.) They are a lifeline and
5 bulwark for the People against the “erosion of the middle class and the rise in income inequality.”
6 (A.B. 5, § 1(c).)

7 12. The time has come for Defendants’ unlawful employee misclassification scheme to
8 end. The People bring this action to ensure that Care Specialist’s caregivers, who work long days
9 caring for some of the State’s most vulnerable populations, receive the full compensation,
10 protections, and benefits they are guaranteed under the law, to restore a level playing field for
11 competing businesses, and to preserve jobs and hard-won worker protections for all Californians.

12 **JURISDICTION AND VENUE**

13 13. The Superior Court has original jurisdiction over this action pursuant to Article VI,
14 Section 10 of the California Constitution.

15 14. The Superior Court has jurisdiction over each Defendant named above, because each
16 Defendant resides in or is headquartered in the State of California and conducts business in this
17 State.

18 15. Venue is proper under Code of Civil Procedure section 393(a), because each
19 Defendant named above resides in or is headquartered in the County of Los Angeles and the
20 illegal acts described below occurred therein.

21 **TOLLING OF STATUTE OF LIMITATIONS AND RELATED DEFENSES**

22 16. Pursuant to valid agreements between the Attorney General’s Office and Defendants
23 Cabrera (both in his individual capacity and dba as TLC Home Care Services) and Jimenez
24 (Tolled Defendants), the People and the Tolled Defendants have tolled all time limits and time-
25 related defenses, either in law or in equity, including but not limited to statutes of limitation,
26 statutes of repose, and the doctrine of laches, relating to claims that the People might bring
27 against the Tolled Defendants pertaining to their business operations and practices.

28 17. An initial tolling agreement became effective on December 17, 2021, and tolled all

1 such claims not then expired until December 17, 2022. The tolling agreement was later extended
2 twice, pursuant to a series of separately executed amendments with the Tolled Defendants, to
3 June 17, 2023. Pursuant to the tolling agreement and extensions, claims the People might bring
4 against the Tolled Defendants pertaining to their business operations and practices have been
5 tolled continuously since December 17, 2021.

6 **PARTIES**

7 **I. PLAINTIFF**

8 18. Plaintiff is the People of the State of California, by and through the Attorney General
9 of the State of California Rob Bonta.

10 19. Rob Bonta is the Attorney General of the State of California and the chief law officer
11 of the State. (Cal. Const., art. V, § 13.) The Attorney General is empowered by the California
12 Constitution to take whatever action is necessary to ensure that the laws of the State are uniformly
13 and adequately enforced. He has the statutory authority to bring actions in the name of the People
14 of the State of California to enforce California’s Unfair Competition Law (UCL) (Bus. & Prof.
15 Code, § 17200 et seq.), and False Advertising Law (FAL) (Bus. & Prof. Code, § 17500 et seq.).
16 He also has the statutory authority to bring an action for injunctive relief to prevent the continued
17 misclassification of employees under A.B. 5 and 2257 (Lab. Code, §§ 2775-2787).

18 **II. DEFENDANTS**

19 20. Defendant Benjamin Cabrera is an individual residing in the City and County of Los
20 Angeles, California.

21 21. On June 17, 2016, the California Department of Social Services (CDSS) issued a
22 Home Care Organization (HCO) license to Cabrera, who had applied for the license as an
23 individual dba TLC Home Care Services.

24 22. Individuals and other entities in the business of providing in-home caregiving services
25 by registered home care aides to clients are required to have a HCO license under the Home Care
26 Services Consumer Protection Act (Health & Saf. Code, § 1796.10 et seq.).

27 23. On his HCO license application, Cabrera identified himself as TLC Home Care
28 Service’s sole owner. Under California law, “[a] sole owner is a sole proprietorship and a sole

1 proprietorship is not a legal entity separate from its individual owner.” (*Ball v. Steadfast-BLK*
2 (2011) 196 Cal.App.4th 694, 701.)

3 24. On August 3, 2021, Cabrera incorporated his caregiving services company under the
4 name TLC Home Care Services Inc.

5 25. On April 12, 2022, a Statement of Information for TLC Home Care Services Inc. was
6 filed with the California Secretary of State listing Peter Cayetano as the company’s new Chief
7 Executive Officer (CEO), Chief Financial Officer, Secretary, and Director. On information and
8 belief, Cayetano purportedly became a co-owner of TLC Home Care Services Inc. at some point
9 after it was incorporated.

10 26. On or about September 21, 2022, Cabrera and Cayetano sold their combined 100%
11 ownership interests in TLC Home Care Services Inc. to Omar Ombra, who is the husband of
12 Edith Ombra, who at the time was the bookkeeper for Cabrera’s caregiving services business,
13 then doing business under the name of TLC Home Care Services. On information and belief, as
14 TLC’s longtime bookkeeper, Edith Ombra became aware of the Attorney General’s investigation
15 of Defendants Cabrera, Jimenez, and TLC prior to her husband Omar Ombra purchasing the
16 company.

17 27. Defendant Cabrera owned and operated TLC from June 17, 2016 to September 21,
18 2022—first as his sole proprietorship from June 17, 2016 to August 2, 2021, and then as his
19 corporation from August 3, 2021 to September 21, 2022. During his tenure as TLC’s owner and
20 operator, Defendant Cabrera controlled the wages, hours, and working conditions of TLC’s
21 caregivers. At all relevant times, Defendant Cabrera directed, facilitated, caused, or personally
22 performed the unlawful acts alleged below and is also sued in his individual capacity.

23 28. Defendant Geoffrey Jimenez is an individual residing in the City and County of Los
24 Angeles, California.

25 29. Defendant Jimenez managed TLC jointly with Cabrera from June 17, 2016 to
26 September 21, 2022, during which time he also controlled the wages, hours, and working
27 conditions of TLC’s caregivers. At all relevant times, Jimenez directed, facilitated, caused, or
28 personally performed the unlawful acts alleged below and is sued in his individual capacity.

1 30. On September 22, 2022, a day after the business sale agreement to sell TLC Home
2 Care Services Inc. to Omar Ombra was executed, a new Statement of Information was filed with
3 the California Secretary of State listing Omar Ombra as TLC Home Care Services Inc.'s new
4 CEO.

5 31. On September 27, 2022, a few days after the sale, Omar Ombra changed the
6 company's name to Care Specialist HCS Inc.

7 32. Defendant Care Specialist HCS Inc. is a California corporation with its principal place
8 of business at 17050 Chatsworth Street, Suite 208, Granada Hills, CA 91344.

9 33. Defendant Care Specialist HCS Inc. is a successor in liability because it is a mere
10 continuation of Defendant Cabrera's caregiving services business in all its forms (both the sole
11 proprietorship dba TLC Home Care Services, and the corporation operating under the name of
12 TLC Home Care Services Inc.—collectively, TLC), and therefore assumed its liabilities.
13 Defendant Care Specialist HCS Inc. uses the same facility and substantially the same caregiver
14 workforce to offer substantially the same services as TLC. In addition, Defendant Care Specialist
15 HCS Inc. uses substantially the same managers that controlled labor relations for TLC, including
16 Anton Sano, who served as TLC's office manager. On information and belief, Defendant Care
17 Specialist HCS Inc. employs as managing agents persons who directly controlled the wages,
18 hours, or working conditions of TLC's caregiver workforce during the time period before the sale
19 of TLC.

20 34. On information and belief, Cabrera sold TLC Home Care Services Inc. to Omar
21 Ombra for the fraudulent purpose of escaping liability for TLC's debts, including the potential
22 financial exposure posed by this action.

23 35. On information and belief, the People allege that there is such a unity of interest
24 between Defendant Cabrera on the one hand, and all other Defendants on the other hand, that the
25 individuality, or separateness, of each entity Defendant never existed or ceased to exist, and that
26 each entity Defendant is the alter ego of Defendant Cabrera. Adherence to the fiction of the
27 separate existence of each entity Defendant would sanction a fraud or promote injustice.

28 36. The true names or capacities of Defendants sued as Doe Defendants 1 through 50 are

1 unknown to the People. The People are informed and believe and, on this basis, allege that each
2 of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, as well
3 as subsidiaries, affiliates, and other entities controlled by Doe Defendants 1 through 50 (hereafter
4 collectively referred to as DOES 1 through 50), are legally responsible for the conduct alleged
5 herein. The names and identities of defendants DOES 1 through 50 are unknown to the People,
6 and when they are known the People will amend this Complaint to state their names and
7 identities.

8 37. Defendants, including those named herein as Doe Defendants, have engaged in a
9 conspiracy, common enterprise, and common course of conduct to, among other things,
10 misclassify employees as independent contractors, withhold earned wages, obscure records, and
11 make false representations to facilitate a common scheme to profit by evading payroll taxes and
12 failing to fulfill wage and workers' compensation insurance premium obligations. The
13 conspiracy, common enterprise, and common course of conduct continues to the present.

14 **FACTUAL ALLEGATIONS**

15 **I. CARE SPECIALIST'S OPERATION AND BUSINESS PRACTICES.**

16 38. Care Specialist provides caregiving services to elderly, disabled, or ill individuals
17 located throughout Southern California. These caregiving services, as advertised on Care
18 Specialist's old and new websites, include companionship, light housekeeping, meal preparation,
19 laundry, medication reminders, and assistance with walking and other activities of daily living.

20 39. To operate Care Specialist, Defendants hired office staff, marketers, and caregivers,
21 employing no less than 800 caregivers since 2016.

22 40. Care Specialist assigns its caregivers to work in its clients' homes.

23 41. Care Specialist has typically required its caregivers to work 12 or 24-hour shifts, often
24 consecutively. Between at least 2016 to 2022, some Care Specialist caregivers worked as many as
25 16 consecutive 24-hour shifts in a single pay period.

26 42. Care Specialist classifies and treats its caregivers as independent contractors.

27 43. Care Specialist's operation and business practices described above in paragraphs 38-
28 42 remained largely the same after Omar Ombra purchased the company and changed its name to

1 Care Specialist HCS Inc.

2 44. Care Specialist uses client contracts which it requires its clients to sign that explicitly
3 refer to caregivers as employees of Care Specialist, even though the company classifies and treats
4 its caregivers as independent contractors.

5 45. Care Specialist's client contracts also contain provisions that threaten clients with
6 steep monetary penalties if they directly hire the caregivers Care Specialist originally assigned to
7 them. For example, Care Specialist's current client contract states:

8 14. HIRING AN AGENCY EMPLOYEE. The Client and/or Client Representative may not
9 employ or independently secure the services of an Agency employee for a period of one
10 year following the date the employee last provided services to the Client. It is understood
11 and agreed that if the client and/or client representative hires Agency employees, friends
12 and or family members thereof, the Client shall pay the Agency a minimum liquidation fee
of \$15,000.00 Under certain circumstances, the Agency may elect to provide to both the
employee and Client, written releases from restriction.

13 These "no-poach" contract provisions violate Business and Professions Code section
14 16600, which renders void contracts that restrain anyone from engaging in a lawful profession,
15 trade, or business of any kind. (Bus. & Prof. Code, § 16600.)

16 46. While the vast majority of Care Specialist's clients are private individuals in need of
17 in-home caregiving services, they occasionally also include institutional clients like residential
18 care facilities and hospice care companies to which Care Specialist provides the services of its
19 caregivers.

20 47. Some of the hospice care companies to which Care Specialist has provided the
21 services of its caregivers are owned by Cabrera, Jimenez, their relatives, or a combination thereof,
22 including: (1) Blue Water Hospice, Inc [sic]; (2) Compassionate Hospice, Inc.; (3) Corinthian
23 Hospice, Inc.; (4) Immanuel Hospice, Inc.; (5) Kairos Hospice, Inc.; (6) Orange Coast Hospice,
24 Inc.; (7) Socal Hospice Inc [sic]; and (8) Tranquility Hospice, Inc.

25 48. On information and belief, based on a review of some financial records belonging to
26 Cabrera, Jimenez, their hospices, and TLC, Cabrera and Jimenez used TLC's funds to pay for the
27 business expenses of their hospice care companies and vice versa.

28 49. Cabrera also used the funds of TLC and his hospice care companies to issue himself

1 personal loans and to maintain his and Jimenez’s lifestyle, using business funds to pay for his and
2 Jimenez’s mortgages, luxury automobiles, hotels and restaurants, travel, casinos, jewelry, and
3 shopping, among other personal expenses.

4 50. On June 17, 2022, the HCO license issued to Cabrera as an individual dba TLC Home
5 Care Services was closed by the CDSS. Defendant Care Specialist HCS Inc. applied for a HCO
6 license under its new name and its license was recently issued on June 8, 2023. From June 17,
7 2022 to June 7, 2023, Care Specialist provided in-home caregiving services by caregivers to
8 clients without an active HCO license.

9 51. On information and belief, Care Specialist has provided in-home caregiving services
10 to its clients by caregivers who are not all registered with the CDSS as home care aides.

11 **III. UNDER *DYNAMEX* AND ASSEMBLY BILLS 5 AND 2257, CALIFORNIA**
12 **USES THE ABC TEST TO DETERMINE EMPLOYEE STATUS.**

13 52. The California Supreme Court’s 2018 decision in *Dynamex, supra*, 4 Cal.5th 903,
14 along with the passage of A.B. 5 and 2257, have established that the ABC test governs the
15 determination of whether a worker is properly classified as an employee or independent
16 contractor for purposes of the Labor Code, Unemployment Insurance Code, and wage orders of
17 the Industrial Welfare Commission (I.W.C.).

18 53. Under the ABC test, for a worker to be properly classified as an independent
19 contractor rather than an employee, hiring parties like Defendants have the burden of establishing
20 that all of the following three requirements are satisfied: (A) the worker is free from the control
21 and direction of the hiring entity in connection with the performance of the work, both under the
22 contract for the performance of the work and in fact; (B) the worker performs work that is outside
23 the usual course of the hiring entity’s business; and (C) the worker is customarily engaged in an
24 independently established trade, occupation, or business of the same nature as the work
25 performed. (Lab. Code, § 2775(b)(1); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.) These
26 three requirements are referred to as Parts A, B, and C of the ABC test, respectively.

27 54. Because the hiring entity must establish all three parts of the ABC test in order to
28 lawfully classify a worker as an independent contractor, the hiring entity’s failure to satisfy any

1 part of the ABC test results in the worker in question being classified as an employee rather than
2 an independent contractor. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

3 **IV. CARE SPECIALIST PROVIDES CAREGIVING SERVICES BY**
4 **CAREGIVERS WHOM DEFENDANTS HAVE MISCLASSIFIED AS**
5 **INDEPENDENT CONTRACTORS.**

6 55. For purposes of this Complaint, “Caregivers” refers to individuals who were hired by
7 Care Specialist to provide and did provide caregiving services to Care Specialist’s clients in
8 California at any time since December 18, 2017 to the present, including Caregivers who
9 provided services prior to the company’s change in owners and names.

10 56. Care Specialist is a caregiving services company that provides caregiving services to
11 its elderly, disabled, or ill clients.

12 57. Since 2016, Care Specialist has hired hundreds of Caregivers to provide caregiving
13 services mostly to individual clients in their private homes but also to institutional clients in need
14 of caregivers to provide caregiving services to their own individual clients, such as residential
15 care facilities and hospice care companies.

16 58. At all relevant times, Care Specialist advertised its caregiving services on its website
17 and other social media apps, as well as by hiring marketers who visited doctor’s offices and
18 medical facilities to distribute printed brochures listing its caregiving services and rates.

19 **V. DEFENDANTS MISCLASSIFY CARE SPECIALIST’S CAREGIVERS UNDER**
20 **THE ABC TEST.**

21 59. Since 2016, Defendants have misclassified and continue to misclassify Care
22 Specialist’s Caregivers as independent contractors instead of employees.

23 **A. Part A of the ABC Test (“control and direction”)**

24 60. Care Specialist retains all necessary control over its Caregivers’ work, which is to
25 provide caregiving services to Care Specialist’s clients.

26 61. Care Specialist selects which clients it accepts and conducts an evaluation of their
27 care needs. After a potential client calls Care Specialist’s business line, Care Specialist makes an
28 initial evaluation of the client’s care needs over the telephone.

62. After Care Specialist accepts a client, Defendants then decide which Caregivers they

1 will assign to that particular client. Defendants will often assign a Caregiver to a client based on a
2 client's stated preferences of their desired qualities in a Caregiver.

3 63. Defendants discuss and negotiate prices for the services of Care Specialist's
4 Caregivers with Care Specialist's clients.

5 64. Defendants set the pay rates for Care Specialist's Caregivers.

6 65. Care Specialist invoices its clients for the services provided by its Caregivers and
7 collects payment from its clients.

8 66. Defendants pay Care Specialist's Caregivers for the services they provide to Care
9 Specialist's clients.

10 67. Care Specialist handles client complaints regarding the services provided by its
11 Caregivers and resolves complaints that arise from both its Caregivers and clients.

12 68. Defendants set the work schedules for Care Specialist's Caregivers and assign them
13 shifts, with the two most commonly assigned work shifts being 12 and 24-hour shifts.

14 69. Defendants control the wages, hours, and working conditions of Care Specialist's
15 Caregivers by dictating which clients and shifts they will be assigned. The homes of Care
16 Specialist's individual clients differ and different clients have different care needs requiring
17 different levels of care which are often billed at different rates.

18 70. Care Specialist Caregivers and clients do not freely negotiate over the compensation
19 or specific tasks included in the menu of caregiving services Care Specialist provides. Instead,
20 these are negotiated and controlled by Defendants.

21 71. Care Specialist specifies the rules and expectations its Caregivers must follow when
22 providing caregiving services to its clients.

23 72. Defendants retain and exercise the right to cease assigning clients and shifts to Care
24 Specialist's Caregivers as well as to simply outright terminate them.

25 **B. Part B of the ABC Test ("usual course of business")**

26 73. Care Specialist's Caregivers are engaged in work that is within the usual course of
27 Care Specialist's business: the provision of caregiving services. Care Specialist is a caregiving
28 services company that provides caregiving services to its clients.

1 74. Care Specialist’s Caregivers provide the caregiving services that Care Specialist
2 provides its clients. Care Specialist’s Caregivers are an integrated and essential part of Care
3 Specialist’s business.

4 75. At all relevant times, Care Specialist publicly held itself out to the public as a
5 caregiving services company in the business of providing caregiving services. Indeed, in every
6 iteration of its company name, the word “care” is prominently featured—i.e., TLC Home Care
7 Services, TLC Home Care Services Inc., Care Specialist HCS Inc.

8 76. Care Specialist’s old website, as recently as January 2023, described it as “a leader in
9 providing private duty, home care aide, homemaker and companion, caregivers, and license[d]
10 nurses.” This website had a “Meet Our Caregivers” page listing all the tasks that Care Specialist’s
11 Caregivers could provide to clients. Similarly, Care Specialist’s updated website (as of May
12 2023) describes it as a “pioneer[] in providing home care services,” notes that it was “[f]ormerly
13 known as TLC Home Care Services,” and has a “Services” page advertising essentially the same
14 caregiving services advertised on its prior website.

15 77. Care Specialist invoices its clients directly for the entire amount of the caregiving
16 services provided by its Caregivers, and its clients pay Care Specialist for these services, not the
17 Caregivers. If a client has an issue with the quality of the services provided by a Caregiver, the
18 client reports that problem to Care Specialist, and Care Specialist mediates and resolves these
19 issues.

20 78. Care Specialist is financially integrated with and dependent on its Caregivers. Care
21 Specialist only generates income if its Caregivers provide caregiving services to its clients. Care
22 Specialist discusses and negotiates prices for its Caregivers’ services with its clients. It sets the
23 pay rates for its Caregivers. It invoices its clients for the services provided by its Caregivers and
24 collects payment from its clients. It pays its Caregivers for the services they provide to its clients.
25 It generates a profit by paying its Caregivers less than what it charges clients for its Caregivers’
26 services. Without its Caregivers’ labor to provide the caregiving services it provides, Care
27 Specialist’s caregiving services business would not exist.

28 **C. Part C of the ABC Test (“independently established trade, occupation, or business”)**

1 79. Care Specialist’s Caregivers are not engaged in an independently established trade,
2 occupation, or business of the same nature as the work they perform for Care Specialist.

3 80. When providing caregiving services to Care Specialist’s clients, Caregivers are not
4 engaged in their own caregiving services business, but are instead caring for Care Specialist’s
5 clients and generating income for it.

6 81. No specialized skills or training are necessary to perform the duties of a Care
7 Specialist Caregiver. This is evidenced by the list of caregiving services Care Specialist provides
8 its clients, as advertised on its old and new websites, including companionship, light
9 housekeeping, meal preparation, laundry, medication reminders, and assistance with walking and
10 other activities of daily living. Care Specialist permits Caregivers without any specialized skills
11 or training to provide caregiving services to its clients.

12 82. No tools or instrumentalities are necessary to perform the duties of a Caregiver. Care
13 Specialist’ Caregivers simply show up to the private homes or institutional residences of Care
14 Specialist’s clients and perform the caregiving services that Care Specialist has negotiated with its
15 clients and directed its Caregivers to provide.

16 83. It is exclusively through Care Specialist that its Caregivers meet and provide
17 caregiving services for Care Specialist’s clients.

18 84. Care Specialist’s Caregivers generally invest little to no capital to care for Care
19 Specialist’s clients. To provide the caregiving services they provide to Care Specialist’s clients,
20 Caregivers only need reliable transportation to reach the private homes or institutional residences
21 of Care Specialist’s clients.

22 85. Defendants directly shape the earnings of Care Specialist’s Caregivers, and thereby
23 effectively prevent Caregivers from attaining the profits and losses that would ordinarily be the
24 hallmarks of running their own independent businesses.

25 86. Defendants, not Care Specialist’s Caregivers, prescribe the key factors that determine
26 Caregivers’ earnings. Defendants set the prices charged to Care Specialist’s clients, and control
27 Caregivers’ rates of pay, the number of assigned clients and shifts, and the marketing and
28 advertising of Care Specialist’s brand.

1 **VI. DEFENDANTS’ UNLAWFUL MISCLASSIFICATION OF CARE**
2 **SPECIALIST’S CAREGIVERS RESULTS IN UNLAWFUL AND UNFAIR**
3 **BUSINESS PRACTICES.**

4 87. Defendants cannot meet their burden of showing that Care Specialist’s Caregivers are
5 independent contractors under California’s ABC test for misclassification as adopted in *Dynamex*,
6 *supra*, 4 Cal.5th 903, and as codified in A.B. 5. And 2257. Under Part A of the ABC test,
7 Defendants exercise control over Care Specialist’s Caregivers by, among other things, setting
8 their pay rates and assigning them clients and work shifts. Under Part B of the ABC test,
9 Caregivers perform services within Care Specialist’s usual course of business—providing
10 caregiving services. Under Part C of the ABC Test, Defendants cannot show that Care
11 Specialist’s Caregivers have established independent businesses.

12 88. By misclassifying Care Specialist’s Caregivers, Defendants devised an unlawful
13 business model that denies Caregivers the protections and benefits they rightfully earn as
14 employees, and Defendants thereby gained an unlawful and unfair competitive advantage in the
15 marketplace. Defendants’ misclassification scheme hurts vulnerable Caregivers, undermines law-
16 abiding competitors, evades Care Specialist’s responsibility to contribute its share as an employer
17 into the State’s social insurance programs, and harms taxpayers who are often called upon to
18 address the negative consequences to Caregivers and their families of Defendants’ exploitative
19 employment practices.

20 **A. Defendants’ unlawful misclassification deprives Care Specialist’s Caregivers of their**
21 **rights as employees.**

22 89. Defendants’ misclassification of Care Specialist’s Caregiver workforce has allowed it
23 to gain an unlawful competitive advantage over its competitors by circumventing the protections
24 and benefits that the law requires employers provide to their employees. The laws violated by
25 Defendants include, but are not limited to, requirements relating to minimum wages, overtime
26 wages, business expenses, meal and rest periods, wage statements, paid sick leave and health
27 benefits, and social insurance programs.

28 **1. Minimum Wages**

90. The law requires Caregivers to be paid the applicable state or local minimum wage for

1 each hour worked, regardless of the compensation formula or method.

2 91. Care Specialist does not guarantee its Caregivers a minimum wage under state and
3 local laws. Instead, from at least 2016 to 2022, the hourly rates Care Specialist paid its Caregivers
4 for 12-hour shifts often fell below the applicable minimum wage. Similarly, from at least 2016 to
5 2022, the daily rates Care Specialist paid its Caregivers for working 24-hour shifts result in
6 hourly rates that almost always fall below the applicable minimum wage. For example, when
7 Care Specialist paid Caregivers a daily salary of \$120 for working a 24-hour shift, this yielded an
8 hourly pay rate of \$5.00. But the state minimum wage rate ranged from \$10.50 in 2017 to \$15 in
9 2022, and the City of Los Angeles minimum wage rate ranged from \$12 to \$16.04 during this
10 same period. Care Specialist also often failed to pay its Caregivers who worked shifts other than
11 12 and 24-hour shifts the applicable minimum wage.

12 92. Care Specialist has failed—and continues to fail—to meet its minimum wage
13 obligations with respect to its Caregivers, including hours that are paid at less than the applicable
14 minimum wage.

15 **2. Overtime Wages**

16 93. The law requires Caregivers to be paid the applicable overtime rate of pay—one and
17 one-half times or two times the Caregivers' regular rate of pay—for all hours worked in excess of
18 forty per week, for all hours worked in excess of eight per day, and for all hours worked on the
19 seventh consecutive day of work in a workweek.

20 94. Care Specialist does not pay its Caregivers overtime as required by law, despite the
21 fact that Caregivers working overtime help Care Specialist to ensure a steady and constant supply
22 of caregiving services on which Care Specialist's business depends.

23 95. Care Specialist has failed—and continues to fail—to meet these overtime pay
24 obligations with respect to its Caregivers.

25 **3. Business Expenses**

26 96. The law requires Caregivers to be paid or reimbursed for the necessary expenses in
27 performing their work.

28 97. Caregivers pay for business expenses they incur in the course and scope of performing

1 their work for Care Specialist, including, but not limited to, travel expenses when driving from
2 one client's home to a different client's home.

3 98. Care Specialist has failed—and continues to fail—to meet these expense
4 reimbursement obligations with respect to its Caregivers.

5 **4. Meal and Rest Periods**

6 99. The law requires Caregivers to be provided with one 30-minute duty-free meal period
7 for a work period of more than five hours, and a second 30-minute duty-free meal period for a
8 work period more than ten hours. The law further requires Caregivers to be provided a ten-
9 minute, paid, off-duty rest period for every four hours worked, or major fraction thereof.
10 Authorized or required rest period time shall be counted as paid time worked.

11 100. Care Specialist does not provide for off-duty meal periods and does not authorize or
12 permit paid, off-duty rest periods. Care Specialist does not provide a premium of one hour of pay
13 at the employee's regular rate of compensation for each failure, as required by law.

14 101. Care Specialist has failed—and continues to fail—to meet these meal and rest period
15 obligations with respect to its Caregivers.

16 **5. Wage Statements**

17 102. The law requires Caregivers to receive regular and complete itemized wage statements
18 from Care Specialist, which include, as applicable, gross and net wages earned, hours worked,
19 and hourly wages.

20 103. Care Specialist does not provide its Caregivers with itemized wage statements in
21 conformance with California law.

22 104. Care Specialist has failed—and continues to fail—to meet these wage statement
23 obligations with respect to its Caregivers.

24 **6. Paid Sick Leave Benefits**

25 105. The law requires Caregivers to be provided paid sick leave benefits as specified under
26 California law and local law, including the Los Angeles sick leave ordinance.

27 106. Caregivers do not accrue the paid sick leave benefits from Care Specialist that
28 employers are required to provide under state and local law.

1 107. Care Specialist has failed—and continues to fail—to meet these sick leave obligations
2 with respect to its Caregivers.

3 **7. Social Insurance Programs**

4 108. The law requires Care Specialist to remit contributions or take other mandatory
5 actions under the State’s social insurance programs, including, but not limited to, unemployment
6 insurance, disability insurance, paid family leave, and workers’ compensation.

7 109. These programs are intended to provide wage replacement and other benefits in the
8 event an employee loses a job, becomes disabled or injured (whether on the job or off), needs to
9 care for a family member, or is otherwise unable to work.

10 110. Care Specialist has failed—and continues to fail—to meet these social insurance
11 program obligations with respect to its Caregivers.

12 **B. Defendants’ unlawful misclassification harms law-abiding competitors and would-be**
13 **competitors.**

14 111. Defendants’ unfair and unlawful treatment of Care Specialist’s Caregivers also
15 confers an unfair advantage on Care Specialist over its law-abiding competitors and would-be
16 competitors. Care Specialist utilizes the illegitimate savings it gains from depriving its Caregivers
17 of the full compensation and benefits they earn as employees to offer its caregiving services at an
18 artificially low cost, decimating competitors and generating ill-gotten gains off the backs of its
19 vulnerable Caregivers.

20 112. Defendants’ misclassification of Care Specialist’s Caregivers allows Care Specialist
21 to unlawfully reduce a substantial portion of the labor costs it would otherwise incur if it lawfully
22 classified and compensated its Caregivers as employees, including paying overtime premiums.

23 113. Because Caregiver compensation generally constitutes the lion’s share of operating
24 costs for a caregiving services business, especially one that offers 24-hour care, Care Specialist’s
25 illicit savings allow it to gain an out-sized competitive advantage over other caregiving services
26 businesses. Defendants’ misclassification scheme unlawfully shifts the substantial labor costs of
27 running a caregiving services business from well-resourced Defendants onto Care Specialist’s
28 under-resourced Caregivers, placing law-abiding competitors who bear those costs themselves at

1 a substantial disadvantage.

2 114. In addition to avoiding paying Caregivers for the full compensation they earn as
3 employees under state and local wage and hour laws, Care Specialist also avoids paying its share
4 of state and local payroll taxes and workers' compensation insurance premiums.

5 115. On information and belief, the illicit cost savings Care Specialist has reaped as a result
6 of avoiding employer contributions to state and local unemployment and social insurance
7 programs total well into the hundreds of thousands of dollars. Care Specialist's denial to
8 Caregivers of the full compensation and benefits they are guaranteed under the law as employees
9 pushes the total amount of its illicit cost savings over its law-abiding competitors—or would-be
10 competitors who cannot enter the market—even higher.

11 **FIRST CAUSE OF ACTION**

12 **INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF**
13 **BUSINESS AND PROFESSIONS CODE SECTION 17200 ET SEQ.**
14 **(Against all Defendants)**

15 116. The People reallege and incorporate by reference each allegation contained in the
16 above paragraphs as if fully set forth herein.

17 117. Defendants have engaged, and continue to engage, in acts or practices that are
18 unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of
19 section 17200 of the Business and Professions Code. These acts or practices include, but are not
20 limited to, the following:

- 21 a. Failing to classify Caregivers as employees as required by Labor Code sections 2775,
22 226.8, I.W.C. wage order Nos. 5-2001 and 15-2001, Health and Safety Code section
23 1796.12(a); and California law including the California Supreme Court's decision in
24 *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903;
- 25 b. Failing to pay Caregivers at least the California minimum wage for all time worked as
26 required by Labor Code sections 1182.12 and 1197, I.W.C. wage order Nos. 5-2001 and
27 15-2001, section 4 (currently \$15.50 per hour), and the California Minimum Wage
28

- 1 Order (MW-2023);
- 2 c. Failing to pay Caregivers who worked in Los Angeles at least the Los Angeles minimum
3 wage for all time worked as required by the Los Angeles Minimum Wage Ordinance,
4 Los Angeles Municipal Code, Chapter 18, Article 7, section 187.00 et seq.;
- 5 d. Failing to pay Caregivers the appropriate premium for overtime hours worked as
6 required by Labor Code section 510 and I.W.C. wage order Nos. 5-2001 and 15-2001,
7 section 3;
- 8 e. Failing to reimburse Caregivers for business expenses and losses as required by Labor
9 Code section 2802;
- 10 f. Failing to provide meal periods and pay meal period premiums as required by Labor
11 Code Section 226.7, 512, and I.W.C. wage orders Nos. 5-2001 and 15-2001, section 11;
- 12 g. Failing to authorize, permit, and pay for rest periods and rest period premiums as
13 required by Labor Code section 226.7 and I.W.C. wage order Nos. 5-2001 and 15-2001,
14 section 12;
- 15 h. Failing to provide Caregivers with itemized wage statements as required by Labor Code
16 section 226, and failing to maintain and provide Caregivers with required records as
17 required by I.W.C. wage order Nos. 5-2001 and 15-2001, section 7;
- 18 i. Failing to provide sick leave to Caregivers as required by Labor Code section 246;
- 19 j. Failing to provide sick leave to Caregivers who worked in Los Angeles as required by
20 the City of Los Angeles Paid Sick Leave Ordinance, Los Angeles Municipal Code
21 section 187.00 et seq.;
- 22 k. Failing to pay unemployment insurance taxes for Caregivers as required by
23 Unemployment Insurance Code section 976;
- 24 l. Failing to pay Employment Training Fund taxes for Caregivers as required by
25 Unemployment Insurance Code section 976.6;
- 26 m. Failing to withhold and remit State Disability Insurances taxes for Caregivers as
27 required by Unemployment Insurance Code section 986;
- 28 n. Failing to withhold and remit state income taxes for Caregivers as required by

1 Unemployment Insurance Code section 13020;

- 2 o. Failing to provide workers' compensation for Caregivers as required by Labor Code
3 section 3700 and Health and Safety Code sections 1796.37(a)(3), 1796.42(b));
- 4 p. Failing to provide other rights and benefits to Caregivers under the Labor Code, I.W.C.
5 wage order Nos. 5-2001 and 15-2001, and other local employee protection laws;
- 6 q. Including "no-poach" provisions in its client contracts that operate to unlawfully restrain
7 Caregivers from engaging in a lawful profession, as set forth in Business and
8 Professions Code section 16600;
- 9 r. As alleged in the Second Cause of Action below, falsely advertising to its clients in its
10 client contracts that it classifies and treats its Caregivers as employees when the opposite
11 is true, in violation of Business and Professions Code section 17500;
- 12 s. Failing to operate with an active HCO license at all times as required by Health and
13 Safety Code section 1796.10 et seq.; and
- 14 t. Failing to ensure that all Caregivers employed to provide in-home caregiving services to
15 Care Specialist's clients are registered home care aides, as required by Health and Safety
16 Code section 1796.43.

17 118. Defendants' misclassification of Care Specialist's Caregivers as independent
18 contractors and accompanying failure to comply with numerous provisions of the California
19 Labor Code, including the employee classification provision of Labor Code section 2775, and
20 applicable local ordinances, constitutes an unlawful and unfair business practice and, therefore,
21 violates California's Unfair Competition Law. (Bus. & Prof. Code, § 17200 et seq.)

22 119. Defendants' use of client contracts that falsely advertise that Care Specialist classifies
23 and treats its Caregivers as employees, in violation of Business and Professions Code section
24 17500, constitutes an unlawful and unfair business practice, and, therefore, violates California's
25 Unfair Competition Law. (Bus. & Prof. Code, § 17200 et seq.)

26 120. Defendants' use of client contracts with Care Specialist's clients that include "no-
27 poach" provisions and are void pursuant to Business and Professions Code section 16600,
28 constitutes an unlawful and unfair business practice and, therefore, violates California's Unfair

1 Competition Law. (Bus. & Prof. Code, § 17200 et seq.)

2 121. Defendants' failure to operate Care Specialist with an active HCO license at all times
3 as required by Health and Safety Code section 1796.10 et seq., and Defendants' related failure to
4 ensure that all Caregivers whom Care Specialist places in the homes of its clients are registered
5 home care aides as required by Health and Safety Code section 1796.43, constitute unlawful and
6 unfair business practices and, therefore, violate California's Unfair Competition Law. (Bus. &
7 Prof. Code, § 17200 et seq.)

8
9 **SECOND CAUSE OF ACTION**

10 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500 ET SEQ.**
11 **(Against all Defendants)**

12 122. The People reallege and incorporate by reference each allegation contained in the
13 above paragraphs as if fully set forth herein.

14 123. Defendants have violated, and continue to violate, Business and Professions Code
15 section 17500 et seq. by making or disseminating, or causing to be made or disseminated, false or
16 misleading statements with the intent to induce members of the public to purchase their
17 caregiving services when Defendants knew, or by the exercise of reasonable care should have
18 known, that the statements were false or misleading. The false or misleading statements include,
19 but are not limited to, the following: Defendants state in Care Specialist's client contracts, which
20 clients sign in order to retain Care Specialist's services, that Care Specialist classifies and treats
21 its Caregivers as its employees, when the opposite is true.

22
23 **THIRD CAUSE OF ACTION**

24 **INJUNCTIVE RELIEF FOR VIOLATIONS OF LABOR CODE SECTION 2786**
25 **(Against all Defendants)**

26 124. The People reallege and incorporate by reference each allegation contained in the
27 above paragraphs as if fully set forth herein.

28 125. A.B. 5 and 2257 permit an action for injunctive relief to prevent the continued

1 misclassification of employees as independent contractors. (Lab. Code, § 2786.) This action may
2 be prosecuted by the Attorney General. (*Ibid.*)

3 126. On information and belief, Care Specialist, has and continues to misclassify its
4 Caregivers as independent contractors.

5 127. The People seek an order of this Court, pursuant to Labor Code section 2786, to
6 prevent the continued misclassified of Care Specialist's Caregivers as independent contractors.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the People pray for the following relief:

9 128. Pursuant to Business and Professions Code section 17203, that the Court enter all
10 orders necessary to prevent Defendants, as well as Defendants' successors, agents,
11 representatives, employees, and all persons who act in concert with Defendants from engaging in
12 any act or practice that constitutes unfair competition in violation of Business and Professions
13 Code section 17200, including, but not limited to, the acts and practices alleged in this Complaint;

14 129. Pursuant to Business and Professions Code section 17535, that Defendants, along with
15 Defendants' successors, agents, representatives, employees, and all persons who act in concert
16 with Defendants, be permanently enjoined from making any false or misleading statements in
17 violation of Business and Professions Code section 17500 as alleged in this Complaint;

18 130. Pursuant to Business and Professions Code section 17203, that the Court enter all
19 orders or judgments as may be necessary to restore to any person in interest any money or
20 property that Defendants may have acquired by violations of Business and Professions Code
21 section 17200, as may be proved at trial;

22 131. Pursuant to Business and Professions Code section 17535, that the Court enter all
23 orders or judgments as may be necessary to restore to any person in interest any money or other
24 property that Defendants may have acquired by violations of Business and Professions Code
25 section 17500 et seq., as proved at trial;

26 132. Pursuant to Business and Professions Code section 17206, that each Defendant be
27 assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions
28 Code section 17200 et seq., as proven at trial;

1 133. Pursuant to Business and Professions Code section 17206.1, that each Defendant be
2 assessed an additional civil penalty in an amount up to \$2,500 for each violation of the UCL
3 perpetrated against a senior citizen or disabled person, as proven at trial;

4 134. Pursuant to Labor Code section 2786, an order to prevent each Defendant from
5 continuing to misclassify Care Specialist’s Caregivers as independent contractors;

6 135. That the People recover their costs of suit; and

7 136. Such other and further relief that the Court deems appropriate and just.

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9 Dated: June 15, 2023

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Respectfully Submitted,
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